IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9537 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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DINESH CHHOTALAL GUPTA

Versus

CHHOTALAL KUNJILAL GUPTA

Appearance:

1. Special Civil Application No. 9537 of 1999

MR BR GUPTA for Petitioner No. 1

MR VC VAGHELA for Respondent No. 1-4

MRS SASI V PARIKH for Respondent No. 5

MR KM PARIKH,AGP for Respondent No. 6

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 20/09/2001

ORAL JUDGEMENT

1. The petitioner in this petition under Article 226 of the Constitution of India has challenged the impugned Resolution No. 5(8) dated 17.1.1999 passed by respondent

no.5 Nagarpalika and the order dated 22.10.1999 annexure E passed by the District Collector.

2. It is the case of the petitioner that he is the joint owner and in joint possession of undivided property bearing no. 681/1 + 3 + 6 of Mouje Chandkheda, Taluka District Gandhinagar and the property bearing no. 682 of Mouje Chandkheda is the personal property of the petitioner and exclusively owned and possessed by him. According to the petitioner, the respondents no. 1 to 4 who are the father and brothers respectively, in collusion and connivance with respondent no.5 Nagarpalika, tried to get the petitioner's name deleted as one of the joint owners and possessor of property bearing no. 681 + 3 + 6 and property no. 682.The petitioner, on 13.8.1996, submitted an application addressed to the Chief Officer of respondent no.5 informing him not to make any change in the assessment record of the properties in question without written intimation. The advocate for the petitioner also served legal notice on the respondent no.5 dated 14.8.1996. It is, however, the case of the petitioner that despite the aforesaid position, the respondents prepared false application on behalf of the petitioner addressed to respondent no.5 and informed him to delete the petitioner's name. The said application dated 12.1.1998 is at annexure C. On 17.1.1998, based on the said application dated 12.1.1998, the respondent no.5 passed an unanimous resolution no. 5(8) whereby the name of the petitioner was deleted from the assessment record and the name of respondent no.1 was entered in his place. Against the said resolution, petitioner preferred appeal being Nagarpalika Appeal No. SR 3/99 before the Collector who also by his order dated 22.10.1999, dismissed the said appeal.

3. Having gone through the impugned order passed by the respondent no.6, I am of the opinion that the same is just and proper warranting no interference in this petition under Article 226 of the Constitution of India. In the instant case, the name of the petitioner is deleted in the assessment record and the name of respondent no.1 is entered. Such addition and deletion of entry in the assessment record though have an evidentiary value, but the same will neither create any right nor title in favour of a party. For establishing right and title, party is required to file civil suit and lead evidence. The Collector, in his order, also adopted the same reasonings. The petitioner has come out with a case that the respondents prepared false and forged application on behalf of the petitioner dated 12.1.1998

informing the Nagarpalika to delete the name of the petitioner and to enter the name of respondent no.1 in his place. Whether the said document is false or forged cannot be gone into and decided in the present petition. Even for deciding the same, the petitioner will have to file civil suit wherein by leading evidence, he can establish his case.

4. In view of what is stated above, I see no merit in this petition. There being no substance in this petition, it is dismissed. Rule is discharged with no order as to costs.

(K.R.Vyas,J.)

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